IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6665 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKPARI NARANPARI BAWAJI THRO.WIFE GIRABEN R.BAWAJI

Versus

DISTRICT MAGISTRATE JUNAGADH

Appearance:

MR SUNIL S JOSHI for Petitioner

MR IM PANDYA AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/05/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the detenu through his wife Giraben Rasikpari Bawaji, challenging

his detention in pursuance of the order passed against him the District Magistrate, Junagadh, on 17th of February, 2005, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The detenu is in detention as bootlegger from 17th of February, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority relied upon a solitary crime registered against the detenu for the breach of the provisions of the Bombay Prohibition Act and secondly three in-camera statements as recorded by the sponsoring authority on 29th of January, 1st of February and 2nd of February, 2005 as verified by the detaining authority on 16th of February, 2005. The identity of the witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. The crime against the detenu came to be registered before Junagadh Taluka Police Station on 11th of January, 2005 wherein it was alleged that the petitioner was found in possession of 750 and 3636 bottles as well as 303 crates of prohibited foreign liquor. The detaining authority considered exhaustively and thoroughly the investigation papers in the above said crime.

4. Out of three in-camera statements, first witness referred to an incident of 12th of November, 2004. On that day, at about 4.00 a.m. while the witness was coming in his truck, at that time, the detenu approached him in one matador and insisted that the witness should load the prohibited foreign liquor in his truck from matador, and on refusal, the witness was beaten and threatened to kill. The second incident is of 24th of November, 2004 wherein the witness was a passenger rickshaw driver, was forced by the detenu to transport four crates of prohibited liquor in his rickshaw, and on refusal, he was threatened to kill and was beaten by the detenu. The third witness referred to an incident of 9th of January, 2005, wherein the petitioner forced the witness to reach at Sabalpur Cross-roads at 2.0 p.m. to assist the petitioner in unloading the prohibited liquor. On refusal by the witness, he was threatened to kill and was beaten.

5. Relying upon the above material, the detaining

authority came to the conclusion that the detenu was dealing in storing, selling and transporting the prohibited liquor and was harassing innocent citizens, who became obstacle in execution of his illegal activities of selling prohibited liquor. In view of detaining authority, the detenu was bootlegger within the meaning of the PASA Act and his bootlegging activities were prejudicial to the maintenance of public order and public health. The detaining authority concluded that the bootlegging activities of the detenu were required to be prevented forthwith. The detaining authority considered other alternative remedies available against the detenu under the general law and reached to the subjective satisfaction that there was no other alternative except to detain the detenu under the PASA Act. The detaining authority passed the order of detention of the detenu, as aforesaid, which is under challenge in this petition.

4. Learned Advocate Mr. Sunil Joshi for the petitioner and learned AGP Mr. I.M. Pandya for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether the order in question is vitiated on the ground of taking into consideration extraneous material by the detaining authority to reach the subjective satisfaction.

6. The grounds of detention as placed on record unambiguously establishes that the detaining authority referred to earlier orders passed against the detenu under the PASA Act as bootlegger, which ultimately came to be revoked by the Government, and one order was quashed by this Court. In first reference, the detaining authority stated in the ground that the detenu was detained in the PASA Act. In third reference, even though the detenu continued his illegal activities and again the detaining authority referred to those orders by dates i.e. 4th of January, 21995, 13th of February, 1998 and 1st of July, 2003 and stated that in pursuance of such orders, the detenu was detained and was sent to concerned jail even then the detenu has continued his illegal activities. Reading these two references together, it conveys, undoubtedly, that the detaining authority took into consideration the earlier orders passed against the detenu in pursuance of which the detenu was detained, and out of three such orders, two

were revoked by the Government while one was quashed by this Court.

9. The facts of this case are squarely covered by a decision of the Supreme Court in the matter of CHHAGAN BHAGWAN KAHAR vs N.L. KALNA, as reported in AIR 1989 SC 1234, wherein para 15 the Supreme Court observed as under:

> "15. Mr. Poti has sought to explain the statement of the detaining authority made in his counter saying that the earlier proceeding was considered only to a limited purpose of taking note of the detenu's continued involvement of bootlegging activities, but the entire grounds of earlier detention as they were, were not considered. We are unable to accept this explanation because the detaining authority, in the counter, in clear terms had expressed that he considered the earlier grounds of detention also. Incidentally, it was brought to our notice that a copy of the earlier grounds of detention was also one of the documents furnished to the detenu in the present case which confirms the fact that the detaining authority was considered the earlier grounds of detention along with other documents for drawing his requisite subjective satisfaction for passing this impugned order. In other words, the earlier grounds of detention dated 2.1.1987, quashed by the High Court was one of the material documents considered by the detaining authority in drawing his subjective satisfaction. Therefore, we hold that this order of detention is vitiated on the ground that the detaining authority has taken into consideration the grounds of earlier detention order along with other materials for passing this impugned order. Hence, the order is liable to be set aside. Accordingly, we quash the detention order on this ground and direct that the detenu be set at liberty forthwith if his detention if his detention is not required for any other purpose."

10. Relying upon the above decision of the Supreme Court, this Court also took the same view in the matter of SALIMKHAN @ CHHOTE JABBAR HANIFKHAN PATHAN vs. STATE OF GUJARAT AND ORS., as reported in 2000 (2) GLH 184 and the order of the detention came to be quashed on the same ground. In this case also, it could not be said that the detaining authority has made passing reference of the earlier orders passed against the petitioner, but on

going through the grounds, it is clear that the detaining authority took into consideration those orders in reaching to the subjective satisfaction to detain the petitioner in this case also. The order challenged in this petition, therefore, is required to be quashed on this ground alone.

11. In the result, the petition is allowed. The order passed by the District Magistrate, Junagadh, on 17th of February, 2005, against the detenu in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Rasikpari Naranpari Bawaji is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair